

Internal Revenue Service

Number: **201208019**

Release Date: 2/24/2012

Index Number: 368.06-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-132022-11

Date:

November 28, 2011

Legend

Oldco =

New LLC =

Target 1 =

Target 2 =

Acquirer =

Business A =

Functions =

Facility =

State A =

Country A =

a =

Dear :

This letter responds to your request for rulings, dated August 1, 2011, on certain federal income tax consequences of a proposed series of transactions. The information provided in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Oldco is the common parent of an affiliated group (the “Oldco Group”) that files a consolidated federal income tax return. Oldco is an accrual method taxpayer with a tax year ending September 30th.

Business A is conducted primarily by Oldco. Other business segments are primarily conducted through Oldco’s wholly-owned subsidiaries. In addition, Oldco performs Functions for the Oldco Group. Oldco, in connection with the performance of the Functions, may enter into contractual arrangements for the benefit of its subsidiaries (the “Contractual Obligations”). Oldco owes net intercompany payables in excess of \$a to its domestic and foreign subsidiaries (the “Intercompany Payables”). The vast majority of the Intercompany Payables are related to the Oldco Functions.

PROPOSED TRANSACTION

For purposes of separating the assets and liabilities of Business A from the assets and liabilities related to the Functions, and for what Oldco represents are additional valid business reasons that will make operation of Oldco’s business more efficient, effective, and profitable, Oldco proposes the following steps (i) through (vi) (the “Transaction”):

- (i) Oldco will form a wholly-owned corporation (“Holdco”) pursuant to Business Corporation Law of State A.
- (ii) Holdco will form a wholly-owned limited liability company (“New LLC”) pursuant to the Limited Liability Company Law of State A.

- (iii) Oldco will transfer the assets and liabilities associated with the Functions, the Intercompany Payables, certain Contractual Obligations, the directly owned stock of certain subsidiaries (“US Subs”), directly owned membership interests in single-member U.S. limited liability companies, a directly owned partnership interest in a foreign partnership, and the stock of directly owned controlled foreign corporations (“CFCs”, collectively, the “Transferred Assets”) to Holdco.
- (iv) Simultaneously with the execution of Step (v), Holdco will assume all of the liabilities and obligations of Oldco under an outstanding credit agreement and certain outstanding notes, and Oldco will guarantee all of those liabilities and obligations.
- (v) Pursuant to the Business Corporation Law of State A, Oldco will merge with and into New LLC and the following will happen by operation of law (“the Merger”):
 - a. The legal existence of Oldco will cease and New LLC will be the surviving entity;
 - b. Each outstanding share of Oldco common stock will be converted into a share of Holdco common stock;
 - c. Each option, warrant, or other right to acquire shares of Oldco common stock that is outstanding will represent the right to acquire the same number of shares of Holdco common stock and all non-equity rights measured by the value of Oldco equity will be converted to non-equity rights measured by the value of Holdco equity; and
 - d. New LLC will surrender to Holdco each share of Holdco stock held by Oldco prior to the Merger, which shares will be cancelled.
- (vi) Employees of New LLC that perform the Functions will be transferred to Holdco (the “Post-Merger Transfer”).

The Merger will be effective on the effective date specified in the merger documents filed with the State A Department of Financial Institutions (the “Merger Effective Date”). The Merger will result in Holdco directly owning New LLC, the US Subs, the US single member LLCs, a partnership interest in a foreign partnership previously owned directly by Oldco, and CFCs previously owned directly by Oldco.

Certain transactions (the “Unrelated Transactions”) involving subsidiaries of Oldco were anticipated to be executed before the Transaction but after the submission of your request. Target 1, a lower-tier subsidiary of Oldco, will have merged into Acquirer, a first-tier subsidiary, with Acquirer as the surviving entity. Target 2, a lower-tier

subsidiary, also will have merged into Acquirer, with Acquirer as the surviving entity. The business operations of Target 1 and Target 2 were previously integrated into Acquirer with legal entities remaining in existence. The purpose of the Unrelated Transactions is to dissolve corporate entities that are no longer needed. Oldco represents that the Unrelated Transactions are independent of the Transaction and the decision to execute these transactions is unrelated to whether the Transaction is ultimately executed.

In addition, prior to the Transaction, Oldco may transfer the Facility to Acquirer as a capital contribution. Oldco represents that this transaction is independent of the Transaction and the decision to execute this transaction is unrelated to whether the Transaction is ultimately executed.

Oldco established branch operations in Country A prior to the Transaction but subsequent to the submission of your request.

REPRESENTATIONS

The following representations have been made with respect to the Transaction:

- (a) For U.S. federal income tax purposes, New LLC will be an entity disregarded as separate from Holdco under Treas. Reg. § 301.7701-2(a). In addition, neither Oldco nor Holdco intends to make an election, pursuant to Treas. Reg. § 301.7701-3(a), to treat New LLC as an association.
- (b) The shareholders of Oldco will receive solely Holdco stock in the Transaction.
- (c) Following the Transaction, the shareholders of Oldco will own all of the outstanding stock in Holdco and will own such stock solely by reason of their ownership of stock in Oldco immediately prior to the Transaction.
- (d) Following the Transaction, each shareholder of Oldco will hold the same percentage of stock in Holdco as the percentage of stock such shareholder previously held in Oldco.
- (e) The fair market value of the Holdco stock received by each Oldco shareholder will be approximately equal to the fair market value of the Oldco stock converted in the Transaction.
- (f) Oldco, Holdco, and each of the Oldco Shareholders will pay his, her, or its own expenses incurred in connection with the Transaction.
- (g) At the time of the Transaction, Oldco will not have any outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire shares of Oldco, except for options to purchase

shares of common stock of Oldco, performance shares, or other rights to acquire shares of common stock of Oldco that were granted pursuant to Oldco's compensation plans, all of which were in effect prior to the Transaction. After the Transaction becomes effective, any such Oldco incentive plans will be adjusted, either by amendment or automatic conversion, so that Holdco becomes the issuer of such shares.

- (h) All liabilities to which the Oldco assets are subject at the time of the Transaction and all liabilities of Oldco that are properly treated as being assumed by Holdco in the Transaction (as determined under section 357(d)) are liabilities that were incurred in the ordinary course of business and are associated with assets transferred from Oldco to Holdco.
- (i) At all times prior to acquiring the assets of Oldco in Transaction Step (iii): (i) Holdco will have been engaged in no business activity; (ii) Holdco will have had no federal income tax attributes (attributes described in section 381(c)); and (iii) Holdco will have held no assets (except for holding a minimal amount of assets if such assets are required for the purpose of paying Holdco's incidental expenses or required in order to maintain Holdco's status as a corporation in accord with state law).
- (j) Immediately after Transaction Step (v), Holdco will hold (directly and through New LLC) all the assets held by Oldco immediately prior to the Transaction, except for assets used to pay expenses in connection with the Transaction. These assets used to pay expenses will be less than one percent (1 %) of the fair market value of the net assets of Oldco immediately prior to the Transaction. No assets will be distributed, and there will be no dissenting shareholders.
- (k) Oldco is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

RULINGS

- (1) Steps (i) through (v) of the Transaction will be integrated and treated as the transfer by Oldco of all of its assets, subject to liabilities, to Holdco in exchange for stock of Holdco, followed by the distribution of by Oldco of the Holdco stock to its shareholders in liquidation, and will constitute a reorganization within the meaning of section 368(a)(1)(F) (see Rev. Rul. 67-274, 1967-2 C.B. 141).
- (2) Holdco and Oldco will each be "a party to the reorganization" within the meaning of section 368(b).

- (3) The Post-Merger Transfer will not preclude Steps (i) through (v) from qualifying as a section 368(a)(1)(F) reorganization (Rev. Rul. 96-29, 1996-1 C.B. 50).
- (4) No gain or loss will be recognized by Oldco upon the transfer of all of its assets to Holdco in exchange for Holdco stock and the assumption of liabilities (sections 361(a) and 357(a)).
- (5) No gain or loss will be recognized by Holdco upon receipt of the Oldco assets (section 1032(a)).
- (6) Holdco's basis in the assets acquired from Oldco will be the same as Oldco's basis in such assets immediately before the proposed transaction (section 362(b)).
- (7) Holdco's holding period for the assets acquired from Oldco will include the period during which such assets were held by Oldco (section 1223(2)).
- (8) No gain or loss will be recognized by the shareholders of Oldco upon the receipt of the stock of Holdco in exchange for the stock of Oldco (section 354(a)(1)).
- (9) Any holder of an Oldco option, warrant, or other right to acquire shares of Oldco common stock will not recognize gain or loss upon the conversion (treated as an exchange) of the Oldco option, warrant, or other right to acquire shares of Oldco for Holdco options, warrants, or rights with identical terms (section 354(a); Treas. Reg. § 1.354-1(e)).
- (10) The basis of the Holdco stock in the hands of the Oldco shareholders will be equal, in the case of each shareholder, to the basis of the Oldco stock surrendered by that shareholder in exchange therefor (section 358(a)(1)).
- (11) The holding period for the Holdco stock in the hands of the Oldco shareholders will include the period, in the case of each such shareholder, during which that shareholder held the Oldco stock exchanged therefor, provided that the Oldco stock is held as a capital asset in the hands of that shareholder on the date of the exchange (section 1223(1)).
- (12) As provided by section 381(a), Holdco will succeed to the tax attributes of Oldco enumerated in section 381(c).
- (13) Since the Transaction is treated as a reorganization within the meaning of section 368(a)(1)(F), the affiliated group of which Oldco was the common parent corporation and the taxable year of such affiliated group will not terminate, and such affiliated group and such taxable year will continue with

Holdco, the successor to Oldco, as the common parent of the affiliated group (Treas. Reg. §§ 1.381(b)-1(a)(2) and 1.1502-75(d)(2)(i)).

- (14) Holdco will continue to use the taxpayer identification number previously assigned to Oldco (Rev. Rul. 73-526, 1973-2 C.B. 404).
- (15) None of the rulings set forth above will be altered as a result of Oldco engaging in any of the Unrelated Transactions described above (Rev. Rul. 96-29, 1996-1 C.B. 50).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular no opinion is expressed regarding the tax treatment of the Unrelated Transactions, the transfer of Facility, or the establishment of branch operations in Country A.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Isaac W. Zimbalist

Isaac W. Zimbalist
Senior Technical Reviewer
(Corporate)

cc: